

**COMMITTEE ON PUBLIC WORKS AND PURCHASING**  
**(Standing Committee of Berkeley County Council)**

Chairman: Mr. William E. Crosby, District No. 3

Members: Mr. Milton Farley, District No. 1  
Mrs. Judith K. Spooner, District No. 2  
Mr. Charles E. Davis, District No. 4  
Mr. Steve M. Vaughn, District No. 5  
Mrs. Judy C. Mims, District No. 6  
Mr. Caldwell Pinckney, Jr., District No. 7  
Mr. Henry L. Richardson, Jr., District No. 8  
Mr. James H. Rozier, Jr., Supervisor, ex officio

The COMMITTEE ON PUBLIC WORKS AND PURCHASING, Standing Committee of Berkeley County Council, met on Monday, September 17, 2001, in the Assembly Room, Berkeley County Office Building, 223 N. Live Oak Drive, Moncks Corner, S. C., at 6:58 p.m.

PRESENT: Mr. William E. Crosby, District No. 3, Chairman; Mr. Milton Farley, Councilmember District No. 1; Mrs. Judith K. Spooner, Councilmember District No. 2; Mr. Charles E. Davis, Councilmember District No. 4; Mr. Steve M. Vaughn, Councilmember District No. 5; Mrs. Judy C. Mims, Councilmember District No. 6; Mr. Caldwell Pinckney, Jr., Councilmember District No. 7; Mr. Henry L. Richardson, Jr., Councilmember District No. 8; Mr. James H. Rozier, Jr. Supervisor ex officio; and Mr. D. Mark Stokes, County Attorney.

The requirements of the Freedom of Information Act have been complied with by posting the time, date, place and agenda of this meeting of Berkeley County Council at the entrance to the Berkeley County Office Building, 223 N. Live Oak Drive, Moncks Corner, South Carolina, and a copy of such notice was mailed to all Councilmembers and the News media.

Chairman Crosby called the meeting to order and stated under Item A Ms. Denise Mitchum, CPPB, Berkeley County Water and Sanitation Authority, Director of Purchasing would speak in regard to contracts: 1a) RFP, Central & Lower Berkeley Wastewater Facilities Master Plan/Contract with Davis and Floyd.

Ms. Mitchum stated they interviewed the top two contenders and recommended Davis & Floyd. The cost would be \$94,410, which is a budgeted item. The purpose of the plan would be to look at their line size, their pump and plant maintenance, and also the plant location and sizes. She stated they hoped this proposal would stretch out for the next 20 years to any residential and/or commercial growth in the Berkeley County Area and they are requesting County Council's approval.

It was moved by Councilmember Mims and seconded by Councilmember Spooner to accept the recommendation that the contract be awarded to Davis & Floyd in the amount \$94,410. The motion passed by unanimous voice vote of the Committee.

Chairman Crosby stated they were not ready to go forward with Item 1b, Debris Removal. He asked Ms. Mitchum to address Item 1c, Engineering Services with CDM.

Ms. Mitchum stated this item relates to disaster preparedness in the event of an actual disaster such as a hurricane or a bad storm. She stated they are trying to implement a contract with a Debris Removal Service but they also need someone to manage the debris removal to keep the contractors honest. They sent out for proposals and received two. At the last moment Duberry and Davis pulled out with a conflict but they did go through the presentation process with CDM and Davis and Floyd. Ms. Mitchum stated they selected CDM for the actual engineering services related to disaster debris removal. She stated it would not cost them anything unless and until there is a natural disaster and they had to be called.

It was moved by Councilmember Spooner and seconded by Councilmember Farley to accept the recommendation of CDM for the engineering services for debris removal. The motion passed by unanimous voice vote of the Committee.

Chairman Crosby stated the next item was Sealed Bids: a) Convenience Center Modification, Phase I.

Ms. Mitchum stated they opened bids on September 4 and received four Bids for Convenience Center Modification Phase I. The lowest bid was from Austin Construction in the amount of \$46,800. They are requesting modifications to three of the Convenience Centers located throughout Berkeley County. This is to improve the roll-off pad areas to increase the space so that residents can get to different containers easier. She stated this is also a budgeted item for improvement at the Convenience Centers and they would recommend that the bid be awarded to the low bidder.

It was moved by Councilmember Mims and seconded by Councilmember Farley to approve the low bid of Austin Construction in the amount of \$46,800. The motion passed by unanimous voice vote of the Committee.

Chairman Crosby stated the next item was Protest of the Trommel Screen. He asked that Mr. David Jennings, Attorney BCW&SA, address Council first, then Mr. Kenny and Mr. Manning would be allowed 10 minutes to respond.

Mr. Jennings stated that with some luck this would be the end of conversation about Trommel Screens. He stated he would like to make a short presentation to the Committee to set the stage. The bidding process they undertook to secure Trommel Screens had not been their finest hour and they apologize to the Committee and to the participants. However, it's time to move forward and be done with it. At the July Council Meeting, Council approved the bid of Sand Science, Inc. for the Trommel Screen. Screen Tech, which was the other bidder under their ordinances, had a period of time after the decision was made to file a protest. The procedure is that the protest is heard first by the "Director of Procurement", who by ordinance is Mr. Hehn. Any party aggrieved by that decision may appeal to Council if done within a certain period of

time. When Council makes its final decision on the protest in the absence of fraud, that decision is final and the matter is over. Mr. Jennings stated that Screen Tech appealed Council's decision to Mr. Hehn. In August Mr. Hehn held a hearing with a representative of Sand Science, a representative of Screen Tech, and some of Mr. Hehn's staff, including Legal Counsel. The protest from Screen Tech was based on two points; one of which is the crux of the matter; the other is interesting but is not the basis for Mr. Hehn's decision. One area was arguing between the various companies as to which Trommel Screen most closely complied with the specifications requested. Mr. Jennings stated they could get into extended scientific discussion about whose machine does what, etc. He stated the basis for Mr. Hehn's decision was that their ordinance and the bid specifications required a Bid bond; and the bid specification also said, "bids received without said bid bonds/bid deposit shall be considered as non-responsive and rejected." In Mr. Hehn's decision on the Screen Tech protest, he declared the Sand Science Bid non-responsive because it failed to include a bid bond along with several other things.

Mr. Jennings stated it is before Council to review Mr. Hehn's decision. He stated that all of the parties are present and it would be his recommendation to Council that whatever questions, whatever presentations from either staff or any of the participants, that they hear those this evening. Mr. Jennings advised that Council not reopen this hearing next Monday. He stated that Mr. Kenny of Sand Science is now the appealing party. Mr. Hehn has awarded the bid to Screen Tech, and Mr. Kenny has appealed to County Council who will have the final say next Monday.

Mr. Gerry Kenny of Sand Science addressed Council and agreed that the bid process had been absolutely dreadful. The crux comes down to how the bid was organized. He stated they found out about the bid at the last moment through one of their customers who was bidding on the contract and at his request he went out to review the material. Mr. Kenny stated he attempted to get the information and got all sorts of confusing conflicting information. In resolving this, Council has to ask themselves how were they led astray, why were they led astray, and were they led astray on purpose? He stated Mr. Schlievert told him categorically that he did not have to worry about bid bonds or any of that other stuff and he quoted Mr. Schlievert's saying, "it's a proposal, take no notice of what anyone else tells you, Ms. Mitchum does not know what she is talking about in relation to this, this is strictly proposals, just get the proposals in to us." There was a bid for a grinder and a bid for the Trommel Screen and they had the low bid on both of them. When they found out their bid was called non-responsive on the Trommel they questioned it. Strangely, the bid on the grinder was put off for a week; so, they re-bid and filled out everything that was necessary; there was no attempt on their part not to provide everything. There were only two people to bid on the Trommel Screen. Had they not bid, Water and Sanitation would have had only one response. Mr. Kenny stated the whole purpose is to do something that is in the best interest of Berkeley County. If it was in the best interest of Berkeley County to put off the bid for the grinder for a week, why wasn't it the best interest to put off the other bid for a week. If Berkeley County wants the best machine for the best price it's not good practice to have one bid. It has been obvious through this process that Berkeley County Water and Sanitation wanted the other machine. Mr. Kenny stated their low bid was done in a bona fide manner. If they look at the time frame, there were meetings after meetings where the different merits of the machines were discussed. At no time during those meetings

was the point about their bid being non-responsive brought up. He stated they sent their bid along with a letter stating that they were not including a bid bond because they had been explicitly told by Mr. Schlievert not to do so. Mr. Hehn sent them a letter on June 8 that stated they were putting two of their bids in for review, which he thought was an indication that their bid was going forward. They received another letter from Ms. Mitchum asking them to extend the bid until November 16, which indicated in the last paragraph that they had no record of cashier's check for bids submitted and requested forwarding of those documents before completion of bid packet. So, they had complied with everything; however, that doesn't change anything. Berkeley County Water & Sanitation decided to rent the other person's machine for two months and paid \$22,000. They got 2,000 yards of material screened in return, if that.

Mr. Kenny concluded that 1) they were accepted as responsive by the actions that had been taken throughout different meetings; 2) they met the specific guidelines that were sent out; 3) they were low bid saving the County \$37,000; and 4) Council voted for their machine. He stated he is asking Council to stand up for their decision and save \$37,000, which could be spent more wisely than wasting it on the whims of Sanitation.

Councilmember Spooner indicated to Mr. Kenny that on the evening they voted she remembers speaking to him and he said they had submitted a bid bond on one item but not on the Trommel Screen and he did not understand why the bid bond submitted on the grinder would not count for the Trommel Screen. Mr. Kenny stated he asked for clarification but it was after that point. He stated Berkeley County wanted to have a competitive bidding situation so he doesn't think Council was trying to exclude people from the bidding. He had great difficulty getting hold of the individuals.

Supervisor Rozier asked Mr. Kenny if he had received the documentation that indicated he needed to have a bid bond? Mr. Kenny stated no, they had so much confusing documentation. For example, Ms. Mitchum called their office the day he was out and asked the secretary had she gotten the addendums. Myra at the landfill had faxed them sheets of information and one of those sheets indicated there was a bid bond involved.

Councilmember Davis asked Mr. Kenny if he bid equipment through other counties and is the bidding process that much different? Mr. Kenny stated the bidding process does change in different places. Councilmember Davis stated that in his bidding experience he found that counties require bid bonds on almost everything. Did he find it odd that he was told that a bid bond was not required? Mr. Kenny stated no, because they are often looking for proposals and they responded to that.

Mr. Jennings stated that there is a general statement that says, "bids received without said bid bonds, bid deposits, shall be considered as non-responsive and rejected." Mr. Kenny stated he did not get that information for the Trommel Screen; he got that the week later for the Grinder.

Councilmember Vaughn stated that Mr. Kenny has indicated that this was not originally designed to be a bid. It was a proposal and was done in conjunction with having a contractor to do the work at the landfill. He asked was this a bid or simply a proposal?

Mr. Jennings stated all of the documents he has said "Bid." Councilmember Vaughn asked was that what the contractors received when they asked for the original proposals? Mr. Jennings stated Mr. Kenny's position is that there were faxes going from the Landfill Office to him. He said he had not received all of the pages. However, Ms. Mitchum has the fax verifications in her files indicating the number of pages sent. The only record they have is that the pages were sent from their machine. Councilmember Vaughn asked was it County's procedure to send Bids by fax? He thought packets were mailed to interested bidders. Mr. Jennings stated they do have advertising requirements for bids, proposals, etc. He stated Mr. Kenny called them at the eleventh hour and said he wanted to submit a bid and could they get the information to him. So, in order to try to comply with a vendor's request they faxed the information. He stated Mr. Hehn had counseled his employees about whose responsibility it is to provide purchasing information and further emphasizing that since it is the responsibility of one person, it is neither the responsibility nor the prerogative of anybody else to provide information.

Mr. Jennings stated their documents are very clear and they are under pressure from DHEC to start moving some of this stuff. So, they don't have time to start the process over and re-bid. They are left with the County's Ordinances and the bid documents that were prepared for this transaction.

Supervisor Rozier stated a Request for Proposals was once turned down because the envelope wasn't sealed; the instructions indicated the envelope had to be sealed. If a bid is non-responsive we can't accept it. If we start accepting bids that are non-responsive there is no need to have rules and regulations.

Councilmember Vaughn stated he didn't want them to be put in a position like this again by the Committee or the Water and Sanitation Department.

Mr. Kenny stated they are the victims of information not getting to them. He stated they have done nothing wrong in relation to trying to respond the best they could. The fact still remains that they are offering Berkeley County a machine that is more than able to do the job they want done and save \$37,000.

Mr. Manning of Screen Tech stated that they provided a Trommel for Water and Sanitation at the Landfill. The response from everyone that used it was that it is a great machine and they hadn't made one service call in two months. He stated he received all of his bid documents by fax; a bid bond is a required document. Berkeley County would not be saving \$37,000 with Sand Science. Screen Tech's machine is designed for the job at the landfill, which is a very hard application. Mr. Manning stated Mr. Kenny bid three machines and the closest machine to Screen Tech's is over \$200,000. All of their documents were in order and they gave an excellent price on the machine. They ask that Council award the bid to Screen Tech.

Councilmember Spooner stated the evening they voted on the machine from Sand Science, no one else came up to say anything against the machine. She asked can Mr. Kenny's machine do exactly the same job? Did Water and Sanitation actually see Mr. Kenny's machine in action?

Mr. Jennings stated that rather than getting into the subjective question of compliance with the specifications, legally, they can't go there because of the failure to include a bid bond with the bid and several other things that the bid specifications said were mandatory.

It was moved by Councilmember Vaughn and seconded by Councilmember Farley to uphold Mr. Hehn's decision and deny Sand Science's protest. The motion passed by majority voice vote of the Committee with Councilmembers Pinckney and Davis voting "nay."

It was moved by Councilmember Vaughn and seconded by Councilmember Richardson to adjourn. The motion passed by unanimous voice vote of the Committee.

The Meeting adjourned at 7:47 p. m.

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Mr. James H. Rozier, Jr., Supervisor, ex officio

A MEETING of the COMMITTEE ON PUBLIC WORKS AND PURCHASING, Standing Committee of Berkeley County Council, will be held on Monday September 17, 2001, in the Assembly Room, Berkeley County Office Building, 223 N. Live Oak Drive, Moncks Corner, S. C., following the meeting of the Committee on Land Use, and the Committee on Planning and Development, at 6:00 p.m.

**AGENDA**

EXECUTIVE SESSION for the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the County in other adversary situations involving the assertion against the County of a claim.

- A. Ms. Denise Mitchum, CPPB, Berkeley County Water and Sanitation Authority, Director of Purchasing, Re:
  - 1. Contracts:
    - a. RFP, Central & Lower Berkeley Wastewater Facilities Master Plan/ Contract with Davis and Floyd.
    - b. Debris Removal, DRC
    - c. Engineering Services, CDM
  - 2. Sealed Bids:
    - a. Convenience Center Modification, Phase I
  - 3. Protest:
    - Trommel Screen

September 12, 2001  
S/Barbara B. Austin  
Clerk of County Council